

REMARKS/ARGUMENTS

The claims are divided into the following Groups:

- Group I: Claim(s) 1-54, drawn to a cosmetic composition.
- Group II: Claim(s) 55, drawn to a process of improving a tensioning effect.
- Group III: Claim(s) 56, drawn to a process of preventing bleaching of skin.
- Group IV: Claim(s) 57-59, drawn to a process of treating wrinkled skin.

In the Election Requirement, the examiner has identified the following Species:

- Specie A: The block polymer described in Claim 41.
- Specie B: The block polymer described in Claim 42.
- Specie C: The block polymer described in Claim 43.
- Specie D: The block polymer described in Claim 44.
- Specie E: The block polymer described in Claim 45.
- Specie F: The block polymer described in Claim 46.
- Specie G: The block polymer described in Claim 47.
- Specie H: The block polymer described in Claim 48.

Applicants elect, with traverse, Group I, Claims 1-54, for examination. As a single disclosed specie, Applicants provisionally elect, for examination purposes only, the block polymer according to Claim 44 (Specie D above).

Claims 1-40, 44 and 49-54 read on the elected specie. Claims 1-40 and 49-54 are generic.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples

to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1, because under PCT Rule 13.2, they lack the same or corresponding special technical features.

“U.S. Pre-Grant Application Publication (Blin et al) teaches of a cosmetic composition comprising cationic cellulose [page 21, paragraph 453] and a film-forming ethylenic linear block polymer [page 1, paragraph 13]. As such, claims 1 and 5 do not possess a special technical feature, and unity between Groups I-IV is broken.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. **The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).**” (Bold added)

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- ...
(2) A product and a process of use of said product; . . .”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-IV with respect to 37 C.F.R. § 1.475(b)(1).

Moreover, Applicants respectfully refer to Annex B of the Administrative Instructions Under the PCT, paragraph (c), which states in part, “Unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims.” Applicants respectfully submit that Claims 55-59 all depend directly or indirectly from Claim 1 in this application.

Applicants respectfully note that this application is the National stage of PCT/EP04/52270 and that no unity of invention objection was raised during the international phase of prosecution.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

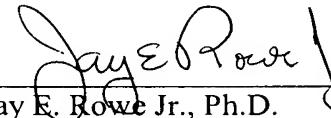
Applicants therefore request that the requirement for restriction be withdrawn.

Applicants request that if the invention of Group I is allowed, withdrawn Group IV, which depends from the allowed claims be rejoined (MPEP § 821.04).

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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